IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.236 OF 2006

IN

SUMMARY SUIT NO.2133 OF 2005

Kishordas Shamjibhai Mehta. ...Plaintiff.

vs.

Alaknanda Stainless Ltd. & others. ...Defendants.

Mr.H.V.Chande, for Plaintiff.

Mr.J.P.Shah, for Defendants.

CORAM: D.K.DESHMUKH,J.

DATED: 7th September,2006.

P.C.:-

1. Admitted position is that there is already a decree passed in favour of the plaintiff and against the defendant nos. 1 and 3. This summons for judgment is therefore, directed against only defendant no.2. The suit of the plaintiff is based on the bill of exchange which is signed by the defendant no.2 as acceptor, and there is no dispute on that. The defence of the defendant no.2-Company is that the suit is barred by Law of limitation. The plaintiff claims extension of period of limitation because of payment of Rs.3,00,000/- (Rupees

Three lakhs only) made by defendant no.2 by cheque dated 22.4.2003. The admitted position is that if this payment is taken into consideration the suit will be within limitation. The plaintiff relies on the letter dated 22.4.2003 addressed to the petitioner by the defendant no.2- Company which is signed by Shri.H.J.Bakshi who is the director of defendant no.2 company. In the rejoinder filed on behalf of defendant no.2, it is claimed that the letter is not signed on behalf of defendant no.2. However, what is pertinent to note is that though in the affidavit filed on behalf of the plaintiff it is specifically stated that the letter is signed by Mr.H.J.Bakshi who is presently a director of defendant no.2 company, no affidavit of Mr.H.J.Bakshi is filed denying that he has signed any such letter. A request was made at the time of hearing that the defendant no.2 should be given an opportunity to file affidavit of Mr.Bakshi. But I declined to grant that request, because in the affidavit-in-rejoinder filed on behalf of the plaintiff dated 25.8.2006 it was specifically stated that the letter is signed by Mr.H.J.Bakshi who is admittedly a Director of defendant no.2-company. Thereafter, the sur-rejoinder has been filed on behalf defendant no.2 but that affidavit has been filed by some other Director of defendant no.2. No reason was given as to why the affidavit of Mr.H.J.Bakshi could not be filed when the sur-rejoinder was filed on 4.9.2006. In my opinion, the fact that the payment was made by cheque and the fact that the letter was sent and signed by one of the Directors of defendant no.2 company who has not come forward to deny that he has enclosed the cheque alongwith that letter, in my opinion, the defence put up by the defendant no.2 cannot be accepted. The defence put up

by the defendant no.2 has no substance. In any case suit is already decreed in favour of plaintiff and against defendant nos. 1 and 3. The summons for judgment is therefore, granted. The suit of the plaintiff is decreed in terms of prayer clause of the suit also against defendant no.2. Refund of Court fees as per rules.